


FRONT LINE

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New Sunshine revisions protect records

 **The revised Sunshine Law takes effect Aug. 28.**

REVISIONS made to the Sunshine Law will help protect sensitive criminal records during the investigative process.

The changes, which take effect Aug. 28, were

supported by law enforcement agencies and associations in Missouri.

Under the new law, there are three categories of records — arrest reports, incident reports and investigative reports.

Arrest report (open record)

An arrest report is a limited report that records an arrest and the crime charged. A “police blotter” or “jail log” is probably sufficient to constitute an arrest report.

Arrest reports become closed **only** if no charges are filed within 30 days of the arrest.

If charges are filed, the arrest record will always be open, regardless of the case outcome.

Incident report (open record)

An incident report is a very limited report that contains only the date, time and location of the incident, victim’s name, and the immediate facts and circumstances surrounding the crime or incident. This report will always be an open record.

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Nixon urges Congress to cut frivolous filings

Attorney General **Jay Nixon** urged Congress to take action to reduce the number of frivolous lawsuits filed by inmates in the nation’s prisons.

Nixon recently joined nine other attorneys general to support federal legislation that would assist states in fending off frivolous claims.

Missouri this year passed a law to reduce meritless inmate lawsuits, which sap millions of dollars from the judicial system in attorney fees, support staff time, court costs and more, Nixon told the Senate Judiciary Committee.

The new state law, which takes effect

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FRIVOLOUS INMATE LAWSUITS

AG Jay Nixon has compiled his list of the most frivolous suits filed by inmates who claim their constitutional rights have been violated:

10 Prisoners should be served butter, not just margarine, with meals (*Mitchell v. Moore*)

9 Inmates working in prison law library should be paid same rate as attorneys (*Beverly v. Groose*)

8 Cost of junk food in prison commissary too high (*Moore v. Bosley*)

7 Limit on refills of Kool-Aid is “cruel and unusual punishment” (*Foster v. Delo*)

6 Nicotine patches not provided free to inmates (*McConnell v. Schoenen*)

5 Inmates should be given sitdown service at restaurants when traveling from prison to courthouse (*Foster v. Delo*)

4 Male inmate should be allowed to wear female apparel such as bras, lipstick and artificial fingernails (*Crawford v. Carnahan*)

3 Inmates not paid \$26 a day in food allowance when traveling from prison to courthouse (*Foster v. Delo*)

2 Buchanan County jail too easy to escape from (*Hodges v. Gill*)

1 No salad bars and brunches on weekends and holidays (*Tyler v. Carnahan*)

Speeding: You're not under arrest



Speeding and careless and imprudent driving are considered infractions under a new law that takes effect Aug. 28. They are treated the same way as traffic belt violations.

A NEW STATE law decriminalizes speeding in Missouri and makes it an infraction with a maximum potential penalty of a \$200 fine.

The crime of careless and imprudent driving also has been reduced to an infraction and an officer only can issue a citation.

The impact on law enforcement officers will be substantial and immediate.

A motorist no longer can be arrested for speeding under state law since a speeding violation no longer is a crime (infractions are not crimes). Since speeders cannot be arrested, they cannot be made to post bond for speeding.

Speeders must be treated

like a seat belt violator and cited for infractions. If an officer tries to arrest an individual for speeding under state law, that officer may be subject to civil liability for making an illegal arrest.

HOWEVER, in municipalities or counties that have ordinances that make speeding punishable with jail time, an officer may still arrest or require bond for that violation.

Also, if a speeder fails to stop when an officer activates his emergency equipment, that speeder cannot be guilty of resisting arrest. The speeder is not resisting an arrest since there no longer is any arrest for speeding.

Likewise, if the motorist

becomes physically confrontational and combative, the officer no longer can make an arrest for the crime of resisting arrest. If an arrest is made, it will have to be for assault.

The points to be assessed for speeding and careless and imprudent driving violations remain unchanged.

The full impact of the new law remains unclear, other than it will alter substantially the options available to police officers during the speeding stop. Officers should contact their prosecutor and associate circuit judge to see how the changes will affect procedures in their county.

FRIVOLOUS LAWSUITS

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Aug. 28, extends prison time for each false claim filed and takes money from the prison spending accounts of inmates who abuse the legal system. Nixon said such reform also is needed at the federal level.

"With law books at their disposal and an abundance of free time, these recreational litigators can be very creative when it comes to

constitutional rights," said Nixon, who is vice chair of the Criminal Law Committee of the National Association of Attorneys General.

"We need to curtail the drain on our judicial resources caused by frequent filers, and send the message that there's no easy money to be made from frivolous lawsuits," Nixon said.

The pending federal legislation, already passed by the House, restricts

the ability of prisoners to sue for damages. Among its provisions:

- Requires that a prisoner exhaust all available administrative remedies before initiating civil action.
- Mandates that courts dismiss any inmate suit if it fails to state a legally recognizable claim.
- Provides a mechanism for courts to require inmates to pay partial filing fees based on a small percentage of their prison trust account.



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UPDATE: CASE LAWS**U.S. SUPREME COURT****Sharlene Wilson v. Arkansas**

115 S.Ct. 1914

May 22, 1995

The court held that the common law knock-and-announce principle forms a part of the Fourth Amendment reasonableness inquiry. This is not to say every entry must be preceded by an announcement. The Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interest.

The Supreme Court left it to the lower courts to determine the circumstances under which an unannounced entry is reasonable under the Fourth Amendment. The court held that "although a search or seizure of a dwelling might be constitutionally defective if police officers enter without prior announcement, law enforcement interest may also establish the reasonableness of an unannounced entry."

Vernonia School District 47J v. Acton

57 Crim. L. Rptr. 2200

June 26, 1995

The court held that random, suspicionless urinalysis testing of public school students who participate in interscholastic athletics, undertaken by a school district to combat a growing drug use and to protect the health and safety of student athletes, is not an unreasonable search prohibited by

the Fourth Amendment.

The court weighed the athletes' reduced expectation of privacy, the negligible intrusion on privacy from urine collection and by the limited testing of samples and disclosure of test results in light of the importance and immediacy of the governmental concern with curbing student drug use in the efficacy of random drug testing to meet that concern.

In this case, the Oregon Public School District adopted a general policy of urine testing to respond to the growing drug problem in the schools since athletes were perceived to be the leaders of the drug culture. Randomly selected athletes were required to report to a locker room and provide a urine specimen within earshot of an adult monitor. A positive analysis triggered a retest; if the retest was positive, the student must participate in an anti-drug program or quit school sports. There were no criminal consequences.

WESTERN DISTRICT**State v. Dennis Carson**

No. 49128

Mo.App., W.D., May 3, 1995

In a prosecution for leaving the scene of an accident, driving while revoked and driving while intoxicated, testimony by an owner of a vehicle was sufficient on the charge of leaving the scene of an accident.

The defendant argued the state failed to produce sufficient evidence to prove the accident resulted in property damage exceeding \$1,000,

which is the element necessary to change the crime of leaving the scene of an accident from a class A misdemeanor to a class D felony.

The victim testified that the value of her vehicle before the accident was \$1,500 and that the damage to the vehicle was more than it was worth. As the vehicle's owner, her opinion of the vehicle's value before and after the collision is sufficient to take to the jury the issue that the damage exceeded \$1,000.

The trial court did not commit plain error in sentencing the defendant as a prior offender on his conviction of driving while revoked. The count of leaving the scene of an accident contained the prior offender allegations while the counts of driving while intoxicated and driving while revoked in the amended information did not contain these allegations. The amended information specifically listed the past crimes that qualified the appellant as a prior offender. There is no express requirement that the prior offender allegations contained in an information with multiple counts be repeated in every count.

State v. Terry L. Newson

No. 47245

Mo.App., W.D., May 30, 1995

In a prosecution for first-degree murder and first-degree assault, the trial court did not err in admitting statements by a friend of the defendant that the victim was attempting to end her relationship with the defendant and that the victim

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had asked the defendant to move out of the house.

The first portion of testimony referred to the friend's knowledge of **previous** communications between the victim and the defendant since the victim told the friend she already had asked the defendant to leave on more than one occasion.

The second portion of testimony involved the victim's present intent to ask the defendant to leave on a specific date after finishing the telephone conversation with the friend.

As to the latter category, the trial court did not err in allowing the testimony. "A declaration indicating a present intention to do a particular act in the immediate future, made in apparent good faith and not for self-serving purposes, is admissible to prove the act was performed." There was no indication of bad faith or self-serving ambition in the victim's statement to the friend that she intended to hang up in order to tell the defendant she wanted him to leave.

Testimony referring to previous conversations between the victim and the friend constituted inadmissible hearsay. The court found that the error was not so prejudicial to mandate reversal since the inadmissible statement was cumulative to other evidence that the victim was trying to remove the defendant from the house.

State v. Mark R. Kilmartin

No. 47244

Mo.App., W.D., June 13, 1995

There was sufficient evidence the defendant committed sodomy by using forcible compulsion on an 11-year-old victim. The defendant's physical force was sufficient to overcome an 11-year-old boy's reasonable resistance.

The defendant, while exerting physical force, threatened further force in no uncertain terms. He repeatedly asked for the victim's consent to the point where, coupled with the threat, it became demanding. They were alone in the defendant's house where the defendant controlled and dominated him, and where the victim would likely feel trapped.

Although he put the boy under duress by frightening him, he persisted until the victim succumbed.

While the defendant did not use a weapon or twist the boy's arm, he exerted force that was as overpowering as a gun. He used physical force by grabbing and holding the boy and used many psychological factors intended to instill fear and wear down the boy's resistance.

He first coaxed the boy with favor and request before resorting to threats and physical force.

SOUTHERN DISTRICT**State v. John Kendus**

No. 19205

Mo.App., S.D., June 14, 1995

There was sufficient evidence of

the defendant's conviction of attempted sodomy. The court relied on Section 564.011.1 RSMo 1986 regarding a substantial step toward the commission of the offense.

There was ample evidence of the defendant's acts and words from which, when considered as a whole, the trial court reasonably and fairly could have conferred to the defendant's purpose to ultimately commit sodomy.

Specifically, he (1) made the victim feel like she was in trouble for trespassing; (2) directed her to a shed where she was to do a "big favor" for him; (3) had the victim kneel after which he stood up; (4) told the children she was to be blindfolded; (5) asked her to suck his fingers and elbow; and (6) made statements to the victim's mother and a police officer that indicated his concern the victim's account of the encounter might indicate it was of a sexual nature.

State v. Cainon Hoff

No. 19721

Mo.App., S.D., July 6, 1995

The court made several holdings related to the admissibility of DNA test results performed under the Polymerase Chain Reaction Technique (PCR). A forensic serologist at a state regional crime lab qualified as a DNA expert.

Besides the witness's chemistry education, he had done DNA testing while working on his master's degree, and had taken a 10-day and a one-week training course on

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performing DNA tests. The witness had run PCR tests on 78 people and performed them in more than 110 criminal matters.

The court summarily dismissed the defendant's claim that "proper methodology" of the test was not established. Relying on *State v. Davis*, 814 S.W.2d 593 (Mo.banc 1991) regarding the RFLP technique of DNA testing, the court stated "the

manner in which the tests were conducted goes more to the credibility of the witness and the weight of the evidence which is in the first instant a discretionary call for the trial court and ultimately for the jury."

The trial court did not abuse its discretion in admitting the test results by stating that sperm found on a nightgown "matched that of the defendant."

The expert testified that the

percentage of the caucasian population matching the semen test result ranged from 9.2 percent to almost 36 percent.

The court also held that the state proved PCR testing has achieved general acceptance in the scientific community. The witness testified it was generally accepted and other law enforcement agencies are using it. The court relied on several cases from other jurisdictions that have upheld the use of PCR testing.

SUNSHINE LAW

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Investigative report (closed record)

This is the type of report police officers have been most reluctant about releasing because of the substantive information it contains: evidence or information gathered in an investigation.

Investigative reports will remain closed records until the case becomes inactive when either:

- the police decide not to pursue the case;
- the statute of limitations expires on the crime (but no more than 10 years); or
- the criminal convictions become final.

Through this year's revisions, the legislature has protected those records police departments have been most concerned about releasing. The legislature sought to balance the needs of the public and the press to know about basic crime information, and the need of the

police to keep specific investigative information closed so a suspect can be successfully arrested and prosecuted without compromising the investigation.

The new law obligates police agencies to maintain all three types of records. For example, if a department does not have any report similar to an incident report, then one must be developed. Some departments are creating a cover sheet for their investigative report forms, which contain this basic information. When an incident report is requested, the department releases that cover sheet.

The law also provides that police agencies have the option to not release information that might otherwise be open in an incident report if the agency believes releasing the information would:

- jeopardize the investigation; or
- subject a victim, witness or officer to danger. Also, the law specifies that the name of a sexual offense victim may remain closed.

Accident reports

A compromise was reached on accident reports, which essentially are investigative reports, which are closed.

The new law, however, states a report, including an investigative report, may be released to an individual, his attorney, or an insurance company for purposes of investigating any **civil** claim.

If a police department does not want to release this accident investigation, the department must file a petition in circuit court to seek an order that the report need not be released because it would jeopardize an investigation or subject a person to danger.

However, there are few instances in which a department would not release an accident report to an insurance company or a driver involved in an accident.

The law continues to allow individuals to file petitions in circuit court to have arrest records expunged if they can show, among other things, that the arrest was illegal.

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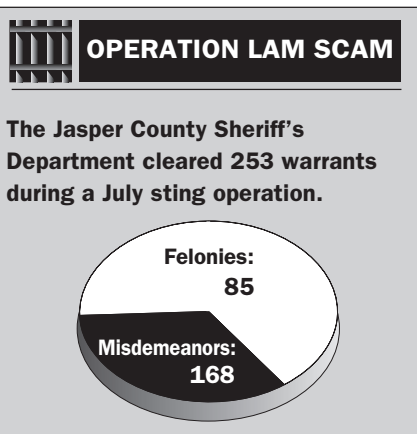
253 warrants cleared in Joplin sting operation

A weeklong undercover sting operation conducted by Attorney General **Jay Nixon** and Jasper County Sheriff **W.J. "Bill" Pierce** resulted in clearing 253 warrants and arresting 174 people, including 85 felons.

The sting attracted fugitives from Missouri and 11 other states, including an Oklahoma man arrested for rape.

The Attorney General's Office sent a letter from the fictitious Missouri Department of Consumer Services, informing fugitives they were eligible for cash awards as the result of a class-action lawsuit brought by the AG's Office. The fugitives were instructed to set up appointments to collect their checks.

A temporary claims office was set



up in Joplin. Undercover officers from the Jasper County Sheriff's Department acted as receptionists and office staff. Other deputies waited in a back room, ready to arrest, book and

jail fugitives.

During Operation Lam Scam, more than \$170,000 was collected in bail money. The sting cost less than \$3,000 for the two agencies.

"The high degree of professionalism demonstrated during this operation is a credit to Sheriff Pierce and the entire department," Nixon said.

Pierce said, "This has been an extremely efficient and safe operation. This operation allowed us to bring fugitives into a controlled environment where arrests were safely made."

This was the third sting conducted by the AG's Office in conjunction with a sheriff. In the past year, 218 warrants were cleared in Jefferson County and 148 in Clay County.